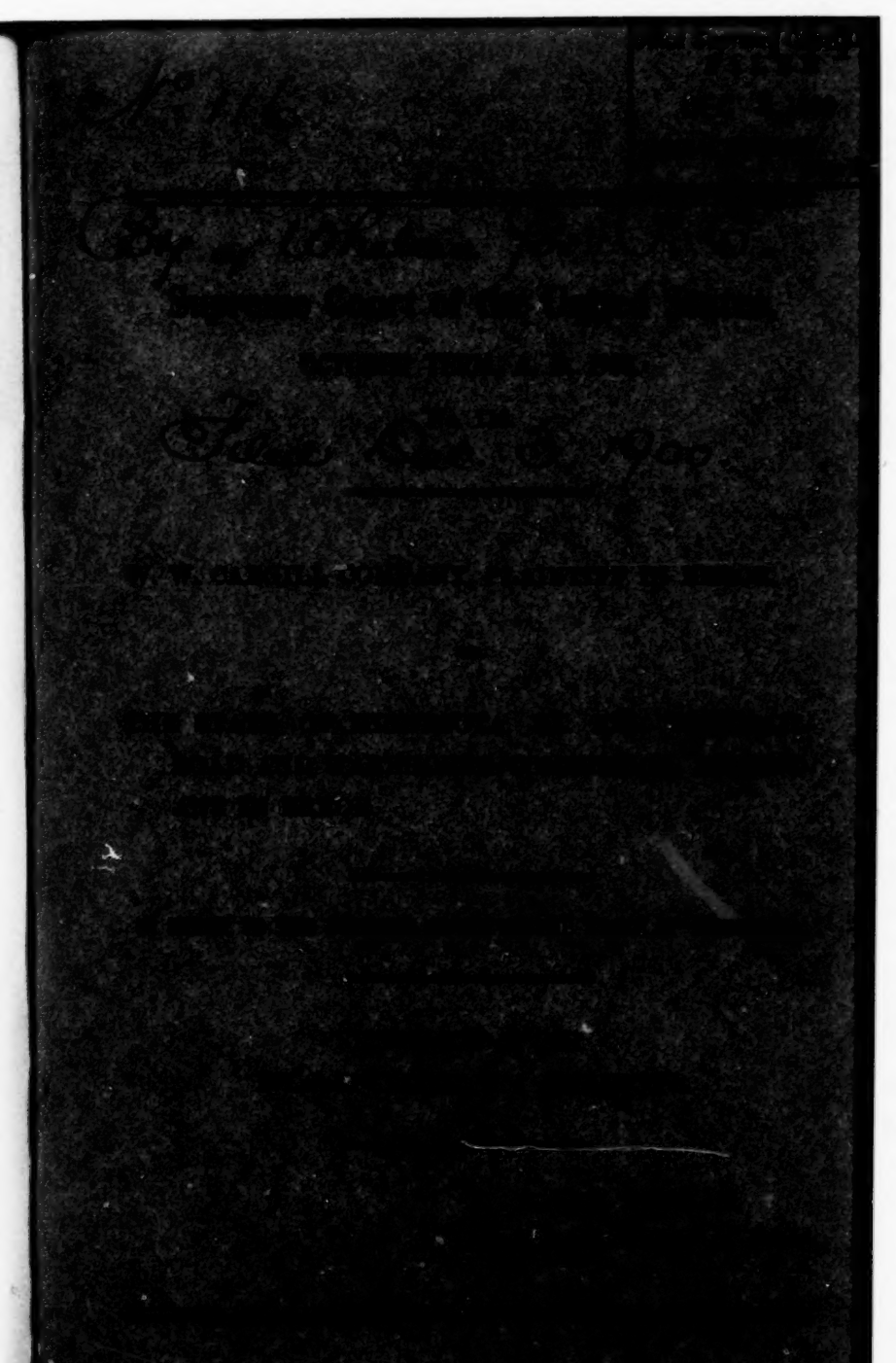

1442

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 116.

W. W. CARGILL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, EX. REL. THE RAILROAD AND WAREHOUSE COMMISSION, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error to the Supreme Court of the State of Minnesota, brought to review a final judgment of that Court in this cause, reversing the judgment of the District Court of said State in favor of the defendant.

The action in which said judgment of said District Court was rendered in favor of the defendant was brought by the State of Minnesota Ex Rel. The Railroad and Warehouse Commission, plaintiff, against W. W. Cargill Company, defendant, and was based upon a general, or public Act of said State, to-wit: Chapter 148 of the General Laws of Minnesota, for the year 1895. (Trans. p. 19.) This Act is as follows:

"AN ACT TO REGULATE THE RECEIPT, STORAGE AND SHIPMENT OF GRAIN AT ELEVATORS AND WAREHOUSES ON THE RIGHT OF WAY OF RAILROADS, DEPOT GROUNDS AND OTHER LANDS USED IN CONNECTION WITH SUCH LINE OF RAILWAY IN THE STATE OF MINNESOTA, AT STATIONS AND SIDINGS, OTHER THAN AT TERMINAL POINTS.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. All elevators and warehouses in which grain is received, stored, shipped or handled and which are situated on the right of way of any railroad, depot grounds or any lands acquired or reserved by any railroad company in this state to be used in connection with its line of railway at any station or siding in this state, other than at terminal points, are hereby declared to be public elevators and shall be under the supervision and subject to the inspection of the railroad and warehouse commission of the state of Minnesota, and shall, for the purposes of this act, be known and designated as public country elevators or country warehouses.

It shall be unlawful to receive, ship, store or handle any grain in any such elevator or warehouse, unless the owner or owners thereof shall have procured a license therefor from the state railroad and warehouse commission, which license shall be issued for the fee of

one (1) dollar per year, and only upon written application under oath, specifying the location of such elevator or warehouse and the name of the person, firm or corporation owning and operating such elevator or warehouse and the names of all the members of the firm or the names of all the officers of the corporation owning and operating such elevator or warehouse and all moneys received for such licenses shall be turned over to the state grain inspection fund. Such license shall confer upon the licensee full authority to operate such warehouse or elevator in accordance with the laws of this state and the rules and regulations prescribed by said commission, and every person, company or corporation receiving such license shall be held to have accepted the provisions of this act, and thereby to have agreed to comply with the same.

If any elevator or warehouse is operated in violation or in disregard of the laws of this state its license shall, upon due proof of this fact, after proper hearing and notice to the licensee, be revoked by the said railroad and warehouse commission. Every such license shall expire on the thirty-first (31st) day of August of each year.

Sec. 2. No person, firm or corporation shall in any manner operate such public country elevator or country warehouse without having a license as specified in the preceding section, and any attempt to operate such elevator or warehouse without such license shall be deemed a misdemeanor to be punished as hereinafter provided, and any attempt to operate such elevator or warehouse in violation of law and without having the license herein prescribed; may upon complaint of the party aggrieved, and upon complaint of the railroad and warehouse commission, be enjoined and restrained by the district court for the county in which the elevator or warehouse in question is situate, by temporary and permanent injunction, conformably to the procedure in civil actions in the district court.

Sec. 3. The railroad and warehouse commission shall before the first (1st) of September of each year, and as much oftener as they shall deem proper, make and promulgate all suitable and necessary rules and regulations for the government and control of public country elevators and public country warehouses, and the receipt, storage, handling and shipment of grain therein and therefrom, and the rates of charges therefor, and the rates so fixed shall be deemed prima facie responsible and proper, and such rules and regulation shall be binding and have the force and effect of law; and a printed copy of such rules and regulations shall at all times be posted in a conspicuous place in each of said elevators and warehouses, for the free inspection of the public.

Sec. 4. The party operating such country elevator or country warehouse shall keep a true and correct account in writing, in proper books, of all grain received, stored and shipped at such elevator or warehouse, stating the weight, grade and dockage for dirt or

other cause on each lot of grain received in store for sale, storage or shipment, and shall, upon the request of any person delivering grain for storage or shipment, receive the same without discrimination during reasonable and proper business hours, and shall, upon request, deliver to such person or his principal, a warehouse receipt or receipts therefor in favor of such person or his order, dated the day the grain was received, and specifying upon its face the gross and net weight of such grain, the dockage for dirt or other cause, and the grade of such grain, conformable to the grade fixed by the state railroad and warehouse commission and in force at terminal points; and shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store to be stored with grain of the same grade under such inspection, and that, upon the return of said receipt or receipts, and upon the payment or tender of payment of all lawful charges for receiving, storing, delivering or otherwise handling said grain, which charges may have accrued up to the time of the return of said receipt or receipts, such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or if the owner so desires, in quantities not less than a carload on track on the same line of railway at any terminal point in this state which the owner may designate, where state inspection and weighing is in force, such grain to be subject to such official inspection and weight as may be determined upon its arrival or delivery at such terminal point and the party delivering shall be liable for the delivery of the kind, grade and net quantity called for by such certificate, less an allowance not to exceed sixty (60) pounds per car load for shrinkage or loss in transit, if such shrinkage or loss occurs. On the return or presentation of such receipts by the lawful holder thereof, properly indorsed, at the elevator or warehouse where the grain represented therein is made deliverable and upon the payment or tender of payment of all lawful charges, as hereinbefore provided, the grain shall be immediately delivered to the holder of such receipt, and it shall not be subject to any further charges for storage after demand for such delivery shall have been made, and cars are furnished by the railway company which the party operating the elevator or warehouse shall have called for promptly upon the request for shipment made by the holder of such receipt in the order of the date upon which such receipts are surrendered for shipment. The grain represented by such receipt shall be delivered within twenty-four (24) hours after such demand shall have been made and cars or vessels or other means of receiving the same from the elevator or warehouse shall have been furnished.

If not delivered upon such demand within twenty-four (24) hours after such car, vessel or other means for receiving the same shall have been furnished, the warehouse in default shall be liable to

the owner of such receipt for damages for such default, in the sum of one (1) cent per bushel and in addition thereto, one (1) cent per bushel for each and every day of such neglect or refusal to deliver; provided, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded by holders of different receipts or terminal orders and as rapidly as due diligence, care and prudence will justify.

On the return of said receipts, if shipment or delivery of the grain at terminal point is requested by the owner thereof, the party receiving such grain shall deliver to said owner a certificate in evidence of his right to such shipment or delivery, stating upon its face the date and place of its issue, the name of the consignor and consignee and place of destination and shall also specify upon the face of such certificate the kind of grain and the grade and net quantity exclusive of dockage, to which said owner is entitled by his original warehouse receipts and by official inspection and weighing at such designated terminal point.

The grain represented by such certificate shall be subject only to such freight or transportation or other lawful charges which would accrue upon said grain from the date of the issue of said certificate to the date of actual delivery, within the meaning of this act, at such terminal point.

All warehouse receipts issued for grain received and all certificates shall be consecutively numbered, and no two receipts or certificates bearing the same number shall be issued during the same year from the same warehouse, except, when the same is lost or destroyed, in which case the new receipt or certificate shall bear the same date and number as the original and shall be plainly marked on its face "Duplicate." Warehouse receipts or certificates shall not be issued except upon grain which has actually been delivered in said country warehouse. Warehouse receipts shall not be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received. No receipt o. certificate shall contain language in anywise limiting or modifying the liability of the party issuing the same as imposed by the laws of this state, and any such language, if inserted, shall be null and void.

A failure to specify in such warehouse receipts or certificates the true and correct grade and net weight, exclusive of dockage, of any lot of grain to which the owner of such grain may be entitled shall be deemed a misdemeanor on the part of the person issuing the same for which, on conviction, he may be punished as hereinafter provided.

Sec. 5. In case there is a disagreement between the person in the immediate charge of and receiving the grain at such country elevator or warehouse, and the person delivering the grain to such elevator or warehouse for storage or shipment, at the time of such

delivery, as to the proper grade or proper dockage for dirt or otherwise, on any lot of grain delivered, an average sample of at least three (3) quarts of the grain in dispute may be taken by one or both parties and forwarded in a suitable sack, properly tied and sealed, express charges prepaid, to the chief inspector of grain at St. Paul, which shall be accompanied by the request in writing, of either or both of the parties aforesaid, that the said chief inspector shall examine the same and report what grade or dockage or both the said grain is, in his opinion, entitled to and would receive, if shipped to the terminal points and subjected to official inspection.

It shall be the duty of said chief inspector, as soon as practicable, to examine and inspect such sample of grain and adjudge the proper grade or dockage or both, to which said sample is, in his judgment, entitled and which grain of like quality and character would receive if shipped to the terminal points and subjected to official inspection.

As soon as said chief inspector has examined, inspected and adjudged the grade and dockage, as aforesaid, he shall at once make out in writing and in triplicate a statement of his judgment and finding in respect to the case under consideration, and shall transmit by mail to each of the parties to said disagreement, a copy of the said statement of his judgment and finding, preserving the original together with the sample on file in his office.

The judgment and finding of the said chief inspector shall be deemed conclusive as to the grade or dockage or both of said sample, submitted for his consideration, as herein provided, as well as conclusive evidence of the grade or dockage or both, that grain of the same quality and character would receive if shipped to the terminal points and subjected to official inspection.

Sec. 6. Whenever complaint is made, in writing, to the railroad and warehouse commission, by any person aggrieved, that the party operating any country elevator or country warehouse under this act fails to give just and fair weights and grades, or is guilty of making unreasonable dockage for dirt or other cause, or fails in any manner to operate such elevator or warehouse fairly, justly and properly, or is guilty of any discrimination then it shall be the duty of the railroad and warehouse commission to inquire into and investigate said complaint and the charge therein contained, and to this end and for this purpose the commission shall have full authority to inspect and examine all the books, records and papers pertaining to the business of such elevator or warehouse, and all the scales, machinery and fixtures and appliances used therein.

In case the said commission find the complaint and charge therein contained, or any part thereof true, they shall adjudge the same in writing and shall at once serve a copy of such decision, with a notice to desist and abstain from the error and malpractice found,

upon the party offending and against whom the complaint was made, and to afford prompt redress to the party injured, and if such party does not desist and abstain and does not give the proper redress and relief to the party injured, it shall be the duty of the said commission to make a special report of the facts found and ascertained upon the investigation of said complaint and the charge therein contained, which report shall also include a copy of the decision by said commission made therein to the attorney of the county where such elevator or warehouse is located who shall institute and carry on in the name of the complainant such actions civil or otherwise as may be necessary and appropriate to redress the wrongs complained of and to prevent their recurrence in the future.

Sec. 7. Any person, firm or corporation operating any country warehouse or country elevator under this act, shall at any and all times when requested by the railroad and warehouse commission, render and furnish in writing under oath to the said commission a report and itemized statement of all grain received and stored in or delivered or shipped from such elevator or warehouse during the year then last passed, such statement shall specify the kind, grade, gross and net weight of all grain received or stored and all grain delivered or shipped, and shall particularly specify and account for all so-called overages that may have occurred during the year. Such statement and report shall be made upon blanks and forms furnished and prescribed by the railroad and warehouse commission.

The commission shall cause every warehouse and the business thereof, and the mode of conducting the same, to be inspected at such times as the commission may order, by one or more members of the commission or by some member of the grain inspection department, especially assigned for that purpose, who shall report in writing to the commission the result of such examination; and the property, books, records, accounts, papers and proceedings, so far as they relate to their condition, operation or management, shall, at all times during business hours, be subject to the examination and inspection of such commission.

Sec. 8. It shall be unlawful for any person, firm or corporation who shall operate any country grain elevator or country warehouse, under this act, to enter into any contract, agreement, understanding or combination with any other person, firm or corporation, who shall operate any other country grain elevator or country grain warehouse under this act, for pooling of the earnings or business of other different and competing grain elevators or warehouses so as to divide between them the aggregate or net proceeds of the earnings or business of such grain elevators or warehouses, or any portion thereof; and in case of any agreement for the pooling of the earnings or business aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 9. Any person, firm or corporation who is guilty of any of the misdemeanors specified in this act, or who is guilty of violating any of the provisions of this act, shall, on conviction, be punished by a fine of not less than fifty (50) dollars and not more than five hundred (500) dollars and in case a natural person is so convicted, he may be imprisoned until the fine is paid or until discharged by due course of law; and in case a corporation is so convicted, the fine may be collected by execution, as judgments are collected in civil actions, or the property of the corporation may be sequestered and charged with the same in appropriate legal proceedings.

Sec. 10. All laws and parts of laws inconsistent with this act are hereby repealed .

Sec. 11. This act shall take effect and be in force from and after the date of its passage.

Approved April 16th, 1895."

The plaintiff's complaint in said action, in said District Court, inter alia, alleges: That the defendant, a Wisconsin corporation, owns, maintains, and operates a public country elevator, wherein wheat, and other grains belonging to defendant and other persons are received, stored, shipped and handled, which elevator is situated in the village of Lanesboro, not a terminal point for the weighing, inspection and handling of grain, State of Minnesota, upon the right of way of the Chicago, Milwaukee and St. Paul Railway Company, a Wisconsin corporation, and upon the lands acquired and reserved by that railway company to be used in connection with its line of railway, at its station in said village: That defendant uses said elevator, in connection with said railway at said station for receiving and shipping wheat and other grains transported over the lines of railway of said railway company to and from said village, and the same is essential and necessary to said railway company in order promptly, safely and properly to handle grain received by it for shipment over its lines to and from said village, and effectively constitutes a necessary adjunct of said railroad in such regard: That defendant has never applied for, or procured a license to receive, ship, store or handle grain in said elevator, and is operating the same without authority, and in violation of said statute. The

prayer of the complaint is "that the defendant be permanently restrained, and enjoined from the further operation of the said elevator in receiving, shipping, storing, or handling of wheat or other grains in the same, until it shall have become duly licensed therefor by the said Railroad and Warehouse Commission, and for its costs and disbursements." (Trans. ps. 12-13.)

The defendant, for its answer, after admitting that the Railroad and Warehouse Commission is composed of the persons in the complaint alleged, duly qualified and acting; that defendant is a Wisconsin corporation, the owner of a certain warehouse, or elevator, situate as in the complaint alleged, and has not applied for or procured a license to receive, ship, store, or handle grain in such warehouse or elevator, pleads the general denial. (Trans. p. 14.)

Said action was tried in, and submitted to said District Court on An Agreed Statement of Facts, (Trans. ps. 16-19) and the facts admitted in the pleadings. Therefrom it appears: That the defendant, W. W. Cargill Company, a Wisconsin corporation, was engaged in the business of buying, selling and dealing in grain, having its principal place of business at La Crosse, Wisconsin, and owned and operated large terminal grain elevators, situated in said La Crosse, and in Green Bay, Wisconsin, and divers other grain warehouses and elevators, situated in other places in said state: That defendant also owned a certain grain warehouse situated in the village of Lanesboro, State of Minnesota, upon the railway line of the Chicago, Milwaukee and St. Paul Railway Company, distant about 54 miles west from, and having by said line of railway direct railway connection with said City of La Crosse: That considerable quantities of grain of different kinds were annually raised in Fillmore County, Minnesota, where said village of Lanesboro was situated, and were marketed, sold, and delivered into the divers local grain elevators, and warehouses in said village, and thence shipped away in cars over said line of railway, which, except wagons drawn by horses, were the only means or instrumentalities for such shipment:

That defendant's building in question was not a grain elevator, but a small grain warehouse, situated on the right of way of said Railway Company, and near to its track in said village, and was occupied and operated by defendant continuously, and had been long prior to the commencement of this action: That said warehouse was of a certain size, description, had a certain location, and was operated in a certain manner, all as described in paragraphs 6, 7, 8, and 9 of the Agreed Statement of Facts, (Trans. p. 17): That defendant used and operated said warehouse, and ever had, to receive, store, ship and handle *its own grain only*, and that of no other person or persons, which grain was *contracted for*, and *purchased*, and received into, and deposited, and handled in said warehouse by the defendant *for the express purpose* of being *shipped*, and transported as the defendant's sole property, and *was actually so shipped* and transported, and had ever been, from said warehouse in carload lots, *directly* and *continuously* over said railway line, *beyond the boundaries of Minnesota* to its said terminal elevators in said cities of La Crosse and Green Bay, or to Milwaukee, Wisconsin, or Chicago, Illinois, and thence to other points in divers states east of Lake Michigan: That defendant has *never received, stored, shipped, or handled* in said warehouse any *grain for, or belonging to any other person or persons*, and has never issued, or offered to issue any warehouse receipt or storage ticket to any person whatever for grain received into said warehouse: That all grain purchased by defendant, and received into said warehouse was, as fast as received, shipped and transported from said warehouse in carload lots of the same kind and grade, or different kinds and grades: That no grain received, deposited, or handled in said warehouse by defendant was, or ever had been bargained, sold, or delivered to any person, firm, or corporation doing business, or resident in, or a citizen of Minnesota; or was, or ever had been shipped or transported to, or delivered at any city, village, town, point or place within the boundaries of Minnesota: That all grain received into, deposited, handled in, or shipped from said warehouse, or that had ever been,

by defendant, was, and had been grown in Minnesota, and was, and had been sold and delivered to, and received by defendant into said warehouse from citizens or residents of, or persons doing business in Minnesota, the weights, grades, dockage and inspection of all such grain being, and having always been, fixed by mutual agreement between such persons and defendant, and without controversy in respect thereto: That no weighing, grading, docking, or inspection of any kind, or supervision or regulation thereof, of any grain received, stored, shipped or handled in said warehouse, by defendant, was, or ever had been done or performed, or attempted or offered to be done or performed in or about said warehouse, on receipt or shipment of any of said grain, or at any other time or place, by any person delegated, or furnished by, or acting for or under the authority of the State of Minnesota, or of any law thereof, or of its Railroad and Warehouse Commission, or any rule, regulation, officer, agent, or representative of such Commission, or by any person whatever, in any capacity whatever: That said village of Lanesboro is not a terminal point for weighing, inspecting, and handling grain: That defendant has not applied to said Railroad and Warehouse Commission for a license, and has procured none to receive, ship, store, or handle grain in said warehouse.

On the trial of said action, in said District Court, after the admissions of parties, proofs, and testimony in the case were all in, and the evidence closed, defendant, by its counsel, moved the court for findings of law, and judgment in its favor for reasons, among others, as follows: "2. That the provisions of Chapter 148, of the General Laws of Minnesota, for the year 1895, have no application to this case upon its facts, and that this case does not fall within the intent and purpose of those provisions or any of them." "3. That upon the facts in this case it appears that the defendant has not violated any of the provisions of Chapter 148, of the General Laws of Minnesota for the year 1895, or any of said provisions, according to their intent and purpose." "4. That the provisions, and each

thereof, of Chapter 148 of the General Laws of Minnesota for the year 1895, considered as applicable to the facts in this case, were not enacted in the legitimate exercise by the State of its police power, do not conduce to any legitimate police purpose, or constitute any police regulation in fact, have no relation whatever to, or tendency to accomplish any matter or thing which is a proper subject of police regulation, are unreasonable, and constitute an arbitrary and unwarranted interference with the right of a person to pursue a lawful business in handling his own sole property, for his own sole purposes, and are unconstitutional, illegal, and void." "7. That the provisions, and each thereof, of Chapter 148, of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to Section one of Article fourteen of the amendments of the Constitution of the United States, and are unconstitutional, illegal, and void." "8. That the provisions, and each thereof, of Chapter 148 of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to Section two, of Article four, of the Constitution of the United States, and are unconstitutional, illegal and void." "9. That the provisions, and each thereof, of Chapter 148, of the General Laws of Minnesota for the year 1895, considered as applicable to the facts of this case, are repugnant to that clause of Section eight of Article one of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, and are unconstitutional, illegal, and void." (Trans. ps. 19-20.)

Thereupon, and after hearing argument of counsel, said District Court granted said motion of defendant, and made and filed in said action its findings of law, and order for judgment for defendant, as follows:

"CONCLUSIONS OF LAW.

Laws 1895, Chapter 148, by its terms applies to elevators and warehouses in which only the grain of the owner is received, stored,

shipped, or handled as well as the elevators and warehouses in which grain of the public is received, stored, shipped, or handled for hire.

Laws 1895, chapter 148, construed as above, is unconstitutional and void in so far as it attempts to declare warehouses and elevators in which only the grain of the owners is received, stored, shipped, or handled, public elevators, and declaring such elevators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses. Said law when so applied does not constitute a proper or lawful exercise of the police power and is in conflict with and repugnant to section one, article fourteen, of the amendments to the Constitution of the United States and to section seven, article one of the constitution of the State of Minnestoa.

Laws 1895, chapter 148, except as it applies or purports to apply to elevators and warehouses in which the grain of the owner only is received, stored, shipped, or handled, is constitutional and valid, being a proper and lawful exercise of the police power of the State.

The plaintiff has failed to establish against the defendant any cause of action, and defendant is entitled to judgment that plaintiff take nothing and have no relief in this action, and that defendant recover its costs and disbursements herein.

Let judgment be entered accordingly." (Trans. ps. 24-25.)

Said District Court also filed with its findings, and order for judgment, its memorandum of opinion set forth here at length in the Transcript of Record. (Trans. ps. 25-28.)

Pursuant to the findings, and order of said District Court, judgment was duly entered therein for the defendant. (Trans. ps. 29-30).

Thereafter plaintiff appealed from the said judgment of said District Court in said action to the Supreme Court of Minnesota, and assigned, among other errors, the following:

"The Court erred in holding that Laws 1895, chapter 148, is unconstitutional and void, in so far as it attempts to declare warehouses and elevators in which only the grain of the owner is received, stored, shipped, or handled public elevators, and declaring such elevators and warehouses to be under the supervision and subject to the inspection of the Railroad and Warehouse Commission, and in so far as it attempts to apply to such elevators and warehouses; said law, when so applied, does not constitute a proper or lawful exercise of the police power, and is in conflict with and re-

pugnant to section one, article fourteen, of the amendments to the Constitution of the United States, and to section seven, article one, of the constitution of the State of Minnesota." (Trans. ps. 10-11.)

On the trial of said action in said Supreme Court the judgment of said District Court was reversed, and final judgment was entered for the plaintiff and appellant. (Trans. ps. 38-39.) This final judgment was rendered by a Court divided in opinion,—Justice Mitchell not concurring, but writing a dissenting opinion. The Court's majority opinion, and reasons for rendering such final judgment, as well as the dissenting opinion of Justice Mitchell, are set forth here at length in the Transcript of Record (Trans. ps. 31-34), and are reported in 77 Minnesota Reports, p. 223.

To review this final judgment of said Supreme Court the action is brought to this Court on Writ of Error, and errors are assigned. (Trans. ps. 7-10.)

SPECIFICATION OF ERRORS RELIED UPON.

The errors here asserted, and intended to be urged, are as follows:

1.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 was enacted in legitimate exercise by said State of Minnesota of its police power in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

2.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 conduces to any legitimate police purpose or has any relation whatever to or tendency to accomplish any matter or thing which is a proper or legitimate subject for police regulation in so far as said law attempts to declare

elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

3.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not unreasonable, illegal, and void, and does not constitute an arbitrary, unwarranted, and unlawful interference with the right of a person to pursue a lawful business in handling his own sole property for his own sole purposes, in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to be subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 7.)

4.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehosues, and to make the same subject to the supervision, inspection, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

5.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property without due process of law, and is not illegal, unconstitutional, and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

6.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to section one of article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is not unconstitutional, illegal and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 8.)

8.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes,' and is not unconstitutional, illegal and void in so far as said law attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 9.)

9.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 is not repugnant to that clause of section eight, article one, of the Constitution of the United States granting to Congress the power 'to regulate commerce with foreign nations, and among the several States, and with Indian tribes,' and is not unconstitutional, illegal, and void in so far as said law attempts to declare elevators or warehouses in which is received, stored, shipped, or handled only the grain of the owner solely purchased and placed in the same for the purpose of shipment and actually shipped from said elevators or warehouses beyond the boundaries of the State of Minnesota into the State of Wisconsin, or the State of Illinois, or to other States, public elevators or warehouses, and to make the same subject to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor." (Trans. p. 9.)

10.

"That said court erred in holding, under the conceded facts as appears by the record aforesaid, that a corporation or person solely engaged in purchasing grain in the State of Minnesota and receiving the same into his own private elevator or warehouse for the sole purpose of shipment and actually shipping the same from such elevator or warehouse to points beyond the boundaries of the

State of Minnesota and into Wisconsin, Illinois, and other States should be compelled for a money consideration to procure a license from said State of Minnesota to engage in such business and to be subject to the rules and regulations of the State Railroad and Warehouse Commission, for the reason that such grain so purchased and shipped immediately upon its purchase becomes a subject of interstate commerce within the commerce clause of section eight, article one, of the Constitution of the United States, and cannot be interfered with or acted upon under the provisions of said chapter 148 of the General Laws of Minnesota for the year 1895." (Trans. p. 9-10.)

11.

"That said court erred in holding that chapter 148 of the General Laws of Minnesota for the year 1895 and the proceedings thereunder in this action, as appears by the record aforesaid, by which the said plaintiff in error has been by a final judgment in the highest court of the State of Minnesota in which a decision in said action could be had perpetually enjoined from further operating its said elevator or warehouse in receiving, shipping, storing, or handling its own wheat or other grain in the same until said plaintiff in error shall have become duly licensed therefor under said law by the State Railroad and Warehouse Commission, are not illegal, unconstitutional and void, and in violation of Section one of Article fourteen of the amendments of the Constitution of the United States, and of section two of article four of the Constitution of the United States, and of the commerce clause of section eight of article one of the Constitution of the United States, and of the fundamental principles of justice which underly the system of State and Federal Government in the United States." (Trans. p. 10.)

12.

"That said court erred in that by the record aforesaid it appears that the judgment aforesaid given was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendant in error.

And the said W. W. Cargill Company, a corporation, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that it, said W. W. Cargill Company, may be restored to all the things which it has lost by occasion of the said judgment, etc." (Trans. p. 10.)

THE QUESTIONS INVOLVED.

FIRST.

Whether said Act (Ch. 148, G. L. Minn. 1895) is repugnant to section one, of article fourteen, of the amendments to the Constitution of the United States, providing that no State shall deprive any person of life, liberty, or property, without due process of law, and is illegal, unconstitutional, and void, especially in so far as said act attempts to declare elevators and warehouses, in which only the grain of the owner is received, stored, shipped, or handled public elevators and warehouses, and to make the same subject to the provisions of said act, and to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. In connection with the foregoing:

1. Whether statutes regulating the business of receiving, handling, storing and shipping grain, and the fixing of charges for such services, which have been held constitutional by the Courts, have been statutes regulating the receiving, shipping, storing, and handling of grain, *for the public, for compensation*, and enacted as police regulations, under the protective power of the State to secure the general safety.

2. Whether said act was enacted in the legitimate exercise by the State of Minnesota of its police power, conduces to any legitimate police purpose, or has any relation whatever to, or tendency to accomplish any matter or thing which is a proper, or legitimate subject for police regulation, especially in so far as said act attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped or handled public elevators and warehouses, and to be subject to the provisions of said act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor.

3. Whether the Minnesota Supreme Court has made any interpretation of said act conclusive on this court, and whether said act, even as interpreted, is constitutional, and valid, and especially as applied to the facts of the case at bar.

4. Whether the provisions of said Act are so connected, and interdependent, that all must fall, if a part only are unconstitutional and void, and especially as applied to the facts of the case at bar.

5. Whether the mere fact that an elevator or warehouse, not used for receiving, handling, or storing grain for others than the owner, is situated on railroad raight-of-way, depot grounds, or land acquired by a railroad company for railroad purposes at one of its stations, or sidings, makes the use and operation of such elevator or warehouse, so situate, a proper or legitimate subject for police regulation, gives to the State the right to require a license for its operation, to declare it a public elevator or warehouse, to be subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to the provisions of said act.

6. Questions concerning the constitutionality of certain provisions of said act.

SECOND.

Whether said Act (Ch. 148, G. L. Minn. 1895) is repugnant to section one, of article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is not unconstitutional, illegal and void, especially in so far as said law attempts to declare elevators and warehouses in which only the grain of the owner is received, stored, shipped, or handled public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such

owner to purchase a license therefor. In connection with the foregoing:

1. Whether the fact, that said Act applies only to elevators and warehouses, situated on railroad right-of-way, depot grounds, or land acquired, or reserved by a railroad company for use in connection with its line of railway at one of its non-terminal stations, or sidings, does not render the Act invalid, and especially so as applied to the facts of the case at bar, as denying to the owners of such elevators, and warehouses, and especially this plaintiff in error, the equal protection of the laws.

THIRD.

Whether said Act (Ch. 148. G. L. Minn. 1895) is repugnant to that clause of section eight, article one, of the Constitution of the United States, granting to Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes," and is not unconstitutional, illegal and void, especially in so far as said Act attempts to declare elevators and warehouses in which is received, stored, shipped or handled only the grain of the owner, solely purchased and placed in the same for the purpose of shipment, and actually shipped from said elevators and warehouses, beyond the boundaries of Minnesota, and into other States, public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to pay a license therefor.

The foregoing, and all other questions raised now in this Court under the specification of errors here relied on, were raised and urged on the trial of the action in one, or both, of the courts below.

BRIEF OF ARGUMENT.

POINTS AND AUTHORITIES.

The jurisdiction of this Court in this case is claimed on the ground, as shown by the record, that it is a writ of error brought to review a final judgment in a suit in the highest court of the State of Minnesota, in which a decision in the suit could be had, where is drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision is in favor of their validity. (R. S. of U. S., Sec. 709.)

Columbia Water Power Co. vs. Columbia &c. Co., 19 Sup. Ct. Rep. 247.

Sully vs. Am. Nat. Bank, 20 Sup. Ct. Rep. 935.

POINT I.

Said Act (Ch. 148, G. L. Minn. 1895) is repugnant to Section one, of article fourteen, of the amendments to the Constitution of the United States, providing, that no State shall deprive any person of life, liberty, or property, without due process of law, and is illegal, unconstitutional, and void, and especially in so far as said Act attempts to declare elevators or warehouses, in which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make them subject to the provisions of said Act, and to the supervision, inspection, and the rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor (Specification of Errors Nos. 4 & 5, *supra;* Trans. p. 8). The discussion of this point involves the discussion of the following questions:

I.

Statutes regulating the business of receiving, handling, storing and shipping grain, and the fixing of charges for such services, which have been held constitutional by the courts, have been statutes regulating the receiving, shipping, handling and storage of grain *for the public, for compensation*, and enacted as police regulations under the protective power of the state, to secure the general safety.

In the year 1871 the Illinois legislature passed an Act, which became a law, entitled: "An Act to Regulate Public Warehouses, and the Warehousing and Inspection of Grain, and to Give effect to Article 13 of the Constitution of this State." R. S. of Ill. (1877, Hurd.) Chap. 114, Sec. 120 et. seq. The Illinois Constitution of 1870, Art. 13, Sec. 1, is as follows: "All elevators or storehouses, where grain or other property is stored *for a compensation*, whether the property stored is kept separate or not, are declared to be public warehouses." R. S. of Ill. (Hurd. 1877) p. 73.

Munn vs. Illinois, 94 U. S. 113. In this leading and well known case it appeared: 1st. That the Constitution of Illinois (said Art. 13, Sec. 1), over which said Act of 1871 in question was drawn, provided: "All elevators or storehouses where grain or other property is *stored for a compensation* * * * are declared to be "*public warehouses*"; 2nd. That said Act of 1871, Sec. 2, provided: "Public warehouses of class 'A' shall embrace all warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, * * * located in cities having not less than one hundred thousand inhabitants"; 3rd. That Munn, and Scott "unlawfully transacted the business of *public warehousemen*, as aforesaid, without procuring a license" * * * "and they then and there carried on the business of receiving, storing and delivering grain *for hire*, without having taken a license" * * * "charged for storing and handling grain higher rates than those fixed by statute." This Court held: "An Act to regulate *public warehouses*, and the warehousing and inspection of grain, and to give effect to Article 13 of the Constitution of this State, is not repugnant to the Constitution of the United States."

In the case of *Wabash &c. Ry. Co. vs. Illinois, 118 U. S. 557, 569*, this Court said: "That case (Munn vs. Illinois) presented the

question of a private citizen, or unincorporated partnership, engaged in the warehousing business in Chicago, free from any claim of right or contract under an Act of incorporation of any State whatever, and free from the question of continuous transportation through several states. And in that case the court was presented with the question which it decided, whether any one engaged in a *public business* in which *all the public had a right to require his service*, could be regulated by acts of the legislature in the exercise of this *public function and public duty*, so far as to limit the amount of charges that should be made for such services."

In the year 1888 the New York legislature passed an Act, which became a law, entitled: "An Act to Regulate the Fees and Charges for elevating, Trimming, Receiving, Weighing and Discharging Grain by Means of Floating and Stationary Elevators and Warehouses in This State." (Ch. 581, Laws N. Y. 1888.) The Act fixed the maximum charges for this work, and provided a penalty for violation.

Budd vs. The State of New York, 143 U. S. 517. This was a case in error to review a judgment of a New York court, adjudging that said Budd pay a fine, and in default thereof, be committed to jail for a violation of said Act of 1888. He was indicted and found guilty, as Manager of the Wells Elevator Company, in the City of Buffalo, a stationary elevator on land, *of charging and receiving from the Lehigh Valley Transportation Company fees, for elevating, and handling certain grain for it* from its vessel, which were in excess of the maximum fees allowed by said Act. This Court affirmed the judgment below, and adjudged said Act valid.

In the year 1891 the North Dakota legislature passed an Act, which became a law, entitled: "An Act to Regulate Grain Warehouses, and the Weighing and Handling of Grain, and Defining the Duties of the Railroad Commission in Relation Thereto." (Ch. 126, Laws of North Dakota 1891.) Section 4 of said Act provided: "All buildings, elevators, or warehouses in this State, erected and operated, or which may hereafter be erected, and operated by any person or persons * * * for the purpose of buying, selling, storing, shipping or handling grain *for profit* are hereby declared public warehouses, and the person or persons * * * owning or operating said buildings * * * are public warehousemen within the meaning of this Act." * * * Other provisions of

the Act required the proprietor, lessee, or manager of any public elevator or warehouse to give a bond to the State; fixed the maximum charges for storing and handling grain; required the warehouseman to keep the grain insured at his own expense, and provided a penalty for breach, etc.

Brass vs. Stoeser, 153 U. S. 391. This was a case in error to review a judgment of a North Dakota court. The validity of said Act of 1891 was involved. Brass owned and operated an elevator in Grand Harbor, North Dakota, in which his principal business was receiving, handling and shipping to Minneapolis and Duluth his *own wheat*, and the handling of the wheat of other people was a *mere incident* when he had storage capacity, not otherwise. He refused to receive certain grain when he had room for it, and wholly refused to store it at the rates provided by statute. This Court held, that one who enters upon the business of elevating, and storing the *grain of other persons for profit*, in North Dakota, becomes subject to the statutory regulations, although he also elevates and stores his own grain in the same warehouse. In its opinion this court, on page 404, said: "We do not understand this law to require the owner of a warehouse, *built and used by him only to store his own grain* to receive and store the grain of others. *Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit.* Then he becomes subject to the statutory regulations, and he cannot escape them by asserting that he also elevates and stores his own grain in the same warehouse."

Rippe vs. Becker, 56 Minn. 100, 108. In this case Justice Mitchell said: "The right of the State in the exercise of its police power *to regulate* the business of receiving, weighing, inspecting and storing grain *for others* in elevators or warehouses, as being a business affected with a public interest, is now settled beyond all controversy. This power extends even to fixing the charges for such services." And he cites the Munn and Budd cases, supra.

We cite also

Granger cases, 94 U. S. 155–187.
Gurney vs. Elevator Co., 63 Minn. 70.
Stewart vs. Great Northern Ry. Co., 68 N. W. Rep. 208.

It is the business of receiving, handling, storing, and shipping grain *for others,* that courts have adjudged to be a business charged with a public interest, and for that reason subject to regulation by Statute.

2.

Said Act (Ch. 148 G. L. Minn. 1895) was not enacted in the legitimate exercise by the State of Minnesota of its police power. Does not conduce to any legitimate police purpose, nor has it any relation whatever to, or tendency to accomplish any matter or thing which is a proper or legitimate subject for police regulation, and especially in so far as said Act attempts to declare elevators or warehouses in which only the grain of the owner is received, stored, shipped or handled public elevators or warehouses, and to be subject to the provisions of said Act, and to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. (Specifications of Errors Nos. 1, 2, 3, Supra; Trans. p. 7.)

No precise limits have been placed upon the police power of the State. The attempted definitions of that power seem to furnish no well defined criterion by which to test cases as they arise. A criterion for determining whether a given Statute has been enacted in the legitimate exercise by the State of its police power is to be found, it is believed, by considering the *purpose* to be secured by the State's exercise of that power. This is to be found among the purposes for which State government is formed. The power of the State to enact laws is limited to the purposes for which it is formed. These, apart from maintaining its own organization, appear to be

to secure the general safety, and to provide for the general welfare. To the end of securing the general safety, State government is endowed with *protective power*, by the exercise of which it protects itself and its citizens against human wrong-doing, and physical danger. To the end of providing for the general welfare State government is endowed with a general governmental power, difficult to define, not necessarily protective, by the exercise of which the State does all that it deems proper for the purpose of providing the general facilities of life, and of elevating the general standard of living. An extended use of the principle of co-operation appears to be involved. These two purposes and ends of State government certainly differ fundamentally in their scope, and it would seem should be regarded as the foundation of two distinct powers. The power vested in government to secure the general safety, and which enables the State to protect itself, and its citizens against human wrong-doing and physical danger is the protective, or what is termed the police power of the State. Properly considered it is not co-terminous with the whole end and object of government, is not identical with sovereignty itself, and is to be distinguished from that general governmental power, inherent in every form of government, to legislate in regard to the public welfare, or public policy of the State.

"The term is now somewhat loosely used in the most comprehensive sense, i. e., so as to embrace the whole system of internal regulations of personal and property rights. It would tend to avoid confusion if the definition were confined and the use of the term were limited to those restraints upon private rights and liberties which the morals, health, or peace of the community may require, leaving other regulations that have no direct relation to morals, health, or peace, but are authorized as being in the interest of the public at large and as subserving the public policy or welfare of the State, to be characterized as general governmental powers or institutions. * * * Many other examples might be given to show that the loose use of the term 'police power' is misleading, and that it would tend to clearness if, as suggested above, the term were confined to statutes or regulations affecting the public health, morals, or peace, and if such other legislation as related to the

public welfare or public policy of the State were designated as within those general governmental powers inherent in every form of government. A classification of this kind would simplify the consideration of many cases, and would avoid much apparent conflict. Rules which are wise and necessary in construing police powers in the narrower sense indicated would then be recognized at once as not at all relevant to the discussion of other governmental powers."

Guthrie, 14th Amend. to Con. of U. S., ps. 74, 75 and 76.

"Discussions of what is called the 'police power' are often uninstructive, from a lack of discrimination. It is common to recognize that the subject is hardly susceptible of definition, but very often, indeed, it is not perceived that the real question in hand is that grave, difficult and fundamental matter—what are the limits of legislative power in general? * * * But often, the discussion turns upon the true limits and scope of legislative power in general —in whatever way it may seek to promote the general welfare."

Thayer, Cases on Con. Law, part 2, 693, note.

"With the Legislature, the maxim of the law, '*salus populi suprema lex*,' should not be disregarded. It is the great principle on which the statutes for the security of the people is based. It is the foundation of criminal law, in all governments of civilized countries, and other laws conducive to safety and consequent happiness of the people. This power has always been exercised by government, and its existence cannot be reasonably denied. How far the provisions of the Legislature can extend, is always submitted to its discretion, *provided its Acts do not go beyond the great principle of securing the public safety*—and its duty, to provide for this public safety, within well defined limits and with discretion, is imperative."

State vs. Noyes, 47 Me. ps. 189, 211–212.

In Matter of Petition of Cheeseborough, 78 N. Y. 232.

In determining whether a law is enacted in the legitimate exercise by the State of its police power the test, the criterion is: Does the law in any way secure, or help to secure the safety of the people of the State generally? Does it protect, or help to protect the State, and its citizens against human wrong-doing, or physical danger? If it does, then the State in enacting such law has acted within the

limits of its police power; if it does not, then the State has not acted within the limits of that power. Applying this criterion to the statutes of Illinois, New York, and North Dakota, referred to supra, the courts declared each of those enactments to be a proper exercise of the State's protective power, because they protected its citizens against human wrong-doing, and were within prescribed constitutional limitations. To say that the business of storing and handling grain for others is a business "affected with a public interest" is but another way of saying that it is a business, the regulation of which in such reasonable way as to secure the general safety is within the protective power of the State. The citizens so protected were those whose grain was stored and handled in, who used the warehouses brought within the operation of the laws. The use of such warehouses for the storage and handling of grain *for the public* was, therefore, the very postulate, the condition precedent, moving the legislature to enact, and the courts to set their seals of judicial approval upon those statutes. Cut out of those statutes the element, *public use*, and their enactment would be outside of the legislative power of the state, and prescribed constitutional limits. It follows, therefore, that, when an elevator or warehouse, owned by a private corporation or individual, is not used to store and handle grain for the public, for the citizens of the State, but is used by its owner, in his private capacity as a warehouseman, to store or handle only his own grain for his own private use, such use of the elevator or warehouse is outside of the power of the State to regulate by law. Any law of the state which attempts to regulate, or in any way interfere with the use and operation of such an elevator or warehouse, devoted wholly to the private use of its owner or possessor, and not in any way to a public use, is beyond the power of the legislature to enact, contravenes established constitutional limitations, and becomes an arbitrary and unwarranted interference with the right of a private person to pursue a lawful business in handling his own, sole property, for his own, sole use and purposes.

Under the facts of this case, the citizens of the state, the public, deposited no grain in defendant's elevator; had no grain stored or handled in or shipped from the same; did not purchase or receive any grain from the same; did unload grain from their wagons into the same after its purchase by defendant; did not in any manner use the same and needed no protection from the state by reason of defendant's use and operation of such elevator. As applied to the facts in this case, therefore, the Act, Chapter 148, Gen'l Laws of 1895, has no relation to or tendency to accomplish, any matter or thing which is a proper subject of police regulation, and becomes an arbitrary and unwarranted limitation upon defendant's rights of personal liberty and private property, contravenes Section 1, of Article 14 of the amendments to the Constitution of the United States, and is illegal and void.

Amend. Const. U. S. Art. 14, Sec. 1.
Brass vs. Stoeser, 153 U. S. 391.
Rippe vs. Becker, 56 Minn. 100.
Stewart vs. Great Northern Ry. Co., 65 Minn. 515.
State vs. Corbett, 57 Minn. 345, 349.
State vs. Donaldson, 41 Minn. 74.
State vs. Ry. Co., 71 N. W. Rep. 400.
Hennington vs. Georgia, 163 U. S. 299.
Plessy vs. Ferguson, 163 U. S. 537, 539.
Mugler vs. Kansas, 123 U. S. 623, 661.
In re Jacobs, 98 N. Y. 98.
Smyth vs. Ames, 169 U. S. 466.

3.

The Minnesota Supreme Court has made no interpretation of said Act conclusive on this Court, and said Act, even as interpreted, is unconstitutional and void, as applied to the facts of the case at bar.

If it be claimed that this Court, in considering the validity or effect of the Act in question, as applied to the facts of the case at bar, must accept the construction placed upon it by the Minnesota Supreme Court, Missouri, etc., Ry. Co. vs. McCann, 19 Sup. C't. Rep. 755, and that the interpretation of a State statute by the Supreme Court of the State, as to the divisibility of provisions, some of which are unconstitutional, is binding on this Court, Noble vs. Mitchell, 164 U. S. 367, we answer:

(1) Such is not the invariable rule of this Court. In the case of Atchison etc., Ry. Co. vs. Mathews, 19 Sup. C't Rep. 609, 611, this court said: "This Court is not concluded by the opinion of the Supreme Court of the State. Yick Wo vs. Hopkins, 118. U. S. 356, 366. It forms its own independent judgment as to the scope and purpose of a statute, while, of course, leaning to any interpretation which has been placed upon it by the highest Court of the State."

(2) The Minnesota Supreme Court held, (Trans. ps. 31-33) that the business carried on by defendant at his warehouse was of such a public character, and sufficiently affected with a public interest, that the provision of the act in question requiring defendant to take out a license to operate such warehouse was valid; that many of the provisions of the act have no application to a warehouse such as defendant's, and the business as there conducted; and say: "There are, perhaps, provisions in the Act which it would be unconstitutional to apply to such a warehouse as this." This was the extent of that Court's interpretation of the Act, if interpretation it can be called. The entire Act was before the Court in a case, where adjudication as to the applicability or validity, as applied to such case, of every provision was relevant. Yet the Court dismissed the case after holding the single provision as to taking out a license valid as applied to defendant's warehouse business, at the same time conceding that other provisions were inapplicable, or invalid, as applied to such a case, without stating what those provisions were.

The Court in interpreting the statute, save in one instance, makes no attempt to sever, or even name the provisions it holds applicable to this case from those it holds inapplicable; or the provisions it holds valid, as applied to this case, from those it holds invalid. The legislature declares *all* elevators and warehouses falling within the purview of the act, whether used for the storage of grain for others or not, to be public elevators and subject to all the provisions of the act. Section 1, of said Act provides: "And every person, company, or corporation receiving such license shall be *held* to have *accepted* the provisions of this Act, and thereby to have *agreed to comply with the same.*" Section 3, gives the Railroad and Warehouse Commission power to prescribe rules and regulations for the government and control of public country elevators and warehouses, and provides that, "such rules and regulations shall be binding and have the force and effect of law." Section 4, provides: "The party operating such country elevator or country warehouse * * * *shall*, upon the request of any person delivering grain for storage or shipment, *receive the same without discrimination*, * * * and *shall*, upon request, *deliver* to such person or his principal a *warehouse receipt*, or *receipts*, therefor, in favor of such person, * * * which receipt shall also state upon its face that the grain mentioned in such receipt or receipts has been received into store," * * * "and that upon the return of said receipt or receipts, and upon payment or tender of payment of all lawful charges," * * * "such grain is deliverable to the person named therein, or his order, either from the elevator or warehouse where it was received for storage; or, if the *owner so desires*," * * * "on track on the same line of railway *at any terminal point in this State*, which the *owner may designate*, where state inspection and weighing is in force." The terminal points where state inspection and weighing are in force as fixed by Statute are Minneapolis, Duluth, St. Paul and St. Cloud. Section 7, requires the operator of any country elevator or warehouse under the Act to render to the

Railroad and Warehouse Commission itemized reports under oath of all grain received and stored in, or delivered or shipped from the same during the year last past; to submit such elevator or warehouse to inspection by the Commission, at its pleasure; to submit the books, records, accounts, papers and proceedings to the examination and inspection of the Commission. Other provisions might be cited. An inspection of the above mentioned, and other provisions of the Act shows that it was not only relevant to the case, but that defendant had the highest *right* to have the Minnesota Supreme Court point out the applicable and inapplicable, the valid and invalid provisions of the Act, as applied to his warehouse business, and adjudge whether the act was severable in its provisions, or whether the valid must fall with the invalid as applied to defendant's warehouse business. We claim that this Statute comes before this Court, unaccompanied by such interpretation by the Minnesota Supreme Court as to bring it within the rule, that an intepretation of a State statute by the Supreme Court of the State, as to the divisability of provisions some of which are unconstitutional, is binding on this Court. Noble case, Supra.

(3) Even assuming that the interpretation of the Act by the Minnesota Supreme Court, and its holding as to the provision requiring defendant to take out a license extended as far as the case before it demanded, still the Act even as thus interpreted, is unconstitutional and invalid as applied to the facts of the case at bar, and the holding error, because section 1, provides that: "Every person, company, or corporation, receiving such license shall be *held* to have *accepted* the provisions of this Act, and *thereby* to have *agreed to comply* with the same;" and because many of the provisions of the Act which follow necessarily as an incident to taking out a license, and which such licensee by the very act of taking out a license, is forced under the terms of the Statute to accept and agree to comply with are manifestly unconstitutional and void, as applied to the facts of the case at bar. Take for example the provisions cited above, from Sections 4 and 7.

The Act thus interpreted also violates the Federal Constitutional requirement of equal laws.

This Court has said: "It is well settled that upon the construction of the constitution and laws of a State this Court, as a general rule, follows the decisions of her highest Court, *unless* they conflict with, or impair the efficacy of some provision of the Federal Constitution or of a Federal Statute, or a rule of General Commercial Law."

Stutsman County vs. Wallace, 142 U. S. 293.

4.

The provisions of said Act are so connected, and interdependent that all must fall, if a part only are unconstitutional, and void as applied to the facts of the case at bar.

The rule laid down by Cooley, and adopted substantially by this Court, is that if the provisions of the Act "are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them."

Cooley Const. Lim. * *p. 179.*
Allen vs. Louisiana 103 U. S. 80.

This Court in the Allen case, Supra, p. 84, says: "The point to be determined in all such cases is whether the unconstitutional provisions are so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature."

While it may be within the protective power of the State to secure its citizens from injury arising from false weights, grades, and dockage of grain, purchased by private warehousemen at their

warehouses not used for the storage of grain, and to enact a law for that purpose, containing provisions appropriate to that class of warehouses, the legislature in enacting the Act in question has done nothing of the kind, has proceeded on no such principle. The general purpose of the legislature in enacting the Act in question, manifestly was to bring, as far as possible, the country elevators and warehouses of the State, situate at "non-terminal points" as distinguished from "terminal points," so-called, under state regulation. The "terminal points," or places in the State were Minneapolis, Duluth, St. Paul and St. Cloud, places where terminal elevators had been established under an existing law; all other places in the State where elevators or warehouses were situated were non-terminal points, so-called. It was a matter of fact, that many of the country elevators and warehouses, situated at non-terminal points, were situated at railway stations, or sidings (side tracks not at stations), and on railway right-of-way, or other lands acquired, and reserved by railroad companies, to be used in connection with their lines of railway. The principle upon which the legislature proceeded to bring the non-terminal country elevators and warehouses, under State regulation, and in enacting the Act in question, was this: To place in a separate and distinct class *all* country elevators and warehouses, used for handling grain, whether used for the storage of grain for others than the owner or not, situated on railway right-of-way or other lands used by railway companies in connection with their railway lines, at stations or sidings which were not terminal points (Sec. 1, of Act); and then *to open* all elevators and warehouses belonging to such class to *public use*, by requiring those operating them to *receive* into the same without discrimination, *grain for storage* or shipment, upon request and delivery *of any person*, and to hold and store such grain, and to issue warehouse receipts therefor to the depositors, which should contain a written contract binding the warehousemen, among other ways, to deliver such grain to the depositor, either at the place of

storage, or *at any terminal point the depositor* may designate, on the same line of railway, where State inspection and weighing were in force, subject to freight charges. (Sec. 4 of Act.) The right of the State to open for public use, and to regulate by law all elevators and warehouses belonging to such class was predicated alone upon the fact, that they were situated on railway right-of-way, or other lands used by railways in connection with their railway lines. This fact was the basis of the classification, and the basis of the right of public control claimed by the legislature. Such was the principle proceeded upon. It clearly appears on consideration of the Act as a whole, and especially of the provision of Sections one, and four. It is the central idea of the Act. On it the Act was built up. To give it force and effect, by enabling the State to ascertain and classify the country elevators and warehouses of the State, to force them and their business open to State inspection and supervision, to protect the public from injury, and imposition, as to rates and charges, grades, dockage and weight, and to enforce penalties provided, the different provisions of the Act were formulated. By these provisions a license is required to enable State officials to ascertain and classify, under the Act, country elevators and warehouses (Sec. 1); rates of charges for handling and storing grain are to be fixed, and rules and regulations, binding and having the force of law, to be promulgated by the Commission (Sec. 3); accounts of all grain handled and stored by the warehouseman, showing weight, grade and dockage are to be kept; grain is, under penalty, to be delivered on demand, and presentation of warehouse receipt, and storage charges; the issuing of warehouse receipts is placed under regulation (Sec. 4); methods for securing correct grades, dockage and weights of grain received for storage or shipment are provided (Sec. 5); methods for dealing with complaints of unfairness as to grades, dockage, and weights, and of discrimination are provided (Sec. 6); written reports, under oath, as to all grain handled or stored, and overages are required to be made by

the warehouseman to the Commission; his warehouse, business, property, books, records, accounts, papers and proceedings are to be submitted to inspection and examination by the Commission (Sec. 7); pooling of earnings or business of competing elevators and warehouses is prohibited (Sec. 8); penalties for violating the provisions of the Act are provided (Sec. 9); to receive, or ship, or store, or handle any grain in an elevator or warehouse of the designated class is made unlawful, unless the warehouseman, on written application, under oath, procures a license so to do from the Commission, and pays one dollar per year therefor; while the warehouseman, by the very act of procuring such license, "shall be held to have *accepted* the provisions of the Act, and thereby to have *agreed* to comply with the same." These various provisions referred to, it is submitted, are by fair intendment ancillary to those main provisions of sections one and four, embodying the central idea of the Act, the principle on which it is founded. They are necessary to give effect to those main provisions; to enable the State, after it has forced open to public use all elevators and warehouses within the designated class, to keep an eye on their business, and to protect the public that uses them. They are inseparably connected with those main provisions as means, and instrumentalities for their effective enforcement, and for securing the public safety on their enforcement. They and those main provisions are connected and interdependent, and constitute a system of rules and regulations applicable as a unit to all elevators and warehouses belonging to the class created by the act. Severance of the provisions of the Act is in the main impossible. Take for instance the provisions of Section four, as to compulsory storage of grain for others, and delivery at a place other than that of storage; and the provisions of Section one, making the place of location of an elevator or warehouse, on railway right-of-way or railway lands, sufficient to charge it with a public interest,—provisions invalid, as we contend, so far as the case at bar is concerned. Sever these provisions from the Act,

and it is destroyed; its central idea is cut out. The remaining ancillary provisions could not stand; they would be without support. In the words of the opinion in the Allen case Supra: "The unconstitutional provisions are so connected with the general scope of the law as to make it impossible, if they are stricken out, to give effect to what appears to have been the intent of the legislature."

In determining the intent of the legislature, the principle upon which it proceeded in enacting the Act in question, a brief reference to the grain and warehouse legislation of Minnesota may be helpful.

Prior to the year 1885,our state legislature had enacted Chap. 57, Gen'l Laws 1864; Chapter 19, Gen'l Laws 1870; Chapter 25, Gen'l Laws 1871; Chapter 31, Gen'l Laws 1874; Chapter 86, Gen'l Laws 1876; Chapter 73, Gen'l Laws 1879; and that most singular Act, Chapter 99, Gen'l Laws 1879, creating the "Farmers' Board of Trade." Each of said Acts concerned, in one way or another, the handling, storing or warehousing of grain, and was a police regulation in the exercise of the protective power of the state to secure the general safety. Minnesota Territory and State originally produced very little grain. Its people largely brought into the State the wheat and flour they used. When its soil was found to be especially adapted to wheat culture, the production of wheat and other small grains increased rapidly as the State grew in population. In a comparatively few years the production of grain in the State had increased to tens of millions of bushels a year, and had become one of the chief products of the State. Until the year 1885, the State had no comprehensive grain and warehouse law. The Acts passed had been fugitive and incomplete. Something more was needed. In the year 1885, the Minnesota legislature enacted Chapter 144, Gen'l Laws 1885. This was an Act entitled: "An Act to regulate warehouses, inspection, weighing and handling of grain." It was very comprehensive in its provisions, which were similar to, and presumably modeled largely after those of the

Illinois Act of 1871, above referred to. Said Chapter 144, Gen'l Laws 1885, applied only to what are called terminal elevators, or warehouses, being those situated in the cities of Minneapolis, St. Paul and Duluth. It declared all elevators, and warehouses situated in Minneapolis, St. Paul and Duluth, in which grain is stored in bulk, and in which the grain of different owners is mixed together, or is stored in such manner that the identity of different lots or parcels cannot be preserved, and doing business *for a compensation*, to be public warehouses, and required the owners of the same to pay a fee to, file a bond with, and receive a license from the State Railroad and Warehouse Commission before operating such warehouses, imposing a penalty for doing business without a license. The Minnesota Act of 1885, like the Illinois Act of 1871, was a police measure by its terms, regulating the receiving, shipping, handling and storage of grain *for the public, for others, and "for a compensation."* Also in the year 1885, the Minnesota legislature passed an Act, Chapter 188, Gen'l Laws 1885, creating the Railroad and Warehouse Commission, and, in the year 1891, by Chapter 99, Gen'l Laws 1891, made the provisions of Chapter 144, Gen'l Laws 1885, apply to St. Cloud, Minnesota, making it a terminal point. In 1893, the Minnesota legislature enacted Chapter 28, Gen'l Laws 1893. The Act is entitled: "An Act to regulate the receiving, storage and shipment of grain at elevators and warehouses *on the right-of-way of railroads*, in the State of Minnesota, at stations and sidings other than at terminal points." By this Act the legislature sought to regulate non-terminal elevators and warehouses, that is, elevators and warehouses in this State situated on any railroad right-of-way, at any place other than Minneapolis, St. Paul, Duluth and St. Cloud. The Act embraced *all* elevators so situated, "*in which grain is stored and handled;*" declared such elevators and warehouses to be public and known as "public country elevators, or country warehouses, placed the same under the supervision of the State Railroad and Warehouse Commission, and re-

quired the owners of such elevators and warehouses to pay a fee of one dollar to, and procure a license from, the State Railroad and Warehouse Commission before they could lawfully operate the same. In 1891, the State of North Dakota had passed an Act entitled: "AnAct to regulate grain warehouses, and the weighing and handling of grain, and defining the duties of the Railroad Commissioners in relation thereto," being Chapter 126, Laws of North Dakota, 1891. The operation of this Act was not local, but applied to all elevators or warehouses, wherever situated throughout the State, erected and operated for the purpose of "buying, selling, storing, shipping or handling of grain "*for profit*," and declared the same to be "public warehouses," and those who owned and operated them, "public warehousemen." Chapter 28, General Laws of 1893, contained many provisions similar to this North Dakota Act of 1891, and was no doubt modeled after it in part. The North Dakota Act applied to "all buildings, elevators or warehouses in this State," erected and operated for the purpose of "buying, selling, storing, shipping or handling grain *for profit*," whether they were situated on railroad right-of-way, or other railroad land, or in any other place. The Minnesota Act, Chapter 28, General Laws 1893, applied only to elevators and warehouses "in which grain is stored and handled," "situate on the *right-of-way* of *any railroad*, at any station or siding in this state other than at terminal points." Only such country elevators and warehouses, so situated, did our legislature seek to regulate by public law. It is to be noted that in this Act the legislature dropped the words: "for a compensation," found in the Minnesota Act of 1885, and in the Illinois Constitution and Act, and did not use the words "for profit," found in the North Dakota Act, but inserted the words: "situate on the right-of-way of any railroad," etc., not found in any of said Acts. In this the Minnesota legislature seems to have made a new departure, and to have intended to regulate elevators and warehouses so situated, whether the grain stored or handled therein was stored or handled for other

persons, for a compensation, or belonged to the owners of such elevators or warehouses, and was stored and handled by them for their own private use and benefit. The legislature seems to have conceived the idea, that a *certain place of location* of an elevator, or warehouse could be made a determining factor in declaring it to be a public elevator or warehouse, without regard to whether it was operated for the use of the public or not. Said Act of 1893, was similar in its provisions to the Act of 1895, in question, which repealed it. The following differences may be noted: The words: "Depot grounds, and other lands used in connection with such line of railway," are added to the title of the Act of 1895, and are not contained in the title of said Act of 1893. The words: "Stored *and* handled" in Sec. 1, said Act of 1893, are changed to read, "received, stored, shipped *or* handled" (in the disjunctive) in Sec. 1, Act of 1895. The words: "Depot grounds, or any lands acquired or reserved by any railroad company in this State, to be used in connection with its line of railway," found in Sec. 1, said Act of 1895, are not contained in said Act of 1893. The remaining provisions of the two Acts are substantially similar, both providing for compulsory storage, and delivery at terminal points, when demanded, there being some difference in the provisions as to such delivery. It is to be noted that the Act of 1895 includes elevators and warehouses situated not only on railway right-of-way, but on other railway lands; elevators and warehouses in which not only grain is "stored *and* handled," but in which grain is "received, stored, shipped *or* handled." The Act of 1895 is broader than that of 1893, and for that reason may have been enacted. Both Acts were enacted to bring non-terminal, country elevators, and warehouses within State regulation. The legislature proceeded upon the same principle in both Acts, and based its right to open for public use, and regulate all elevators, and warehouses, embraced within the class designated, solely on the fact, that they were situated on railway right-of-way, or other railway lands used by railways,

in connection with their lines. The legislature, we conceive, based their right to place non-terminal, country elevators, and warehouses under State regulation upon certain decisions of the Courts, and particularly in the case of Brass vs. Stoeser, 153 U. S. 391, decided in 1894, which declared the North Dakota Act of 1891, above referred to, not unconstitutional, because it was applicable to the entire State, which was agricultural, and was not restricted to large cities. The legislature, we conceive, were emboldened to base their right to regulate non-terminal, country elevators, and warehouses on the strange and novel ground declared in the Acts of 1893, and 1895, upon certain decisions of the Minnesota Courts, holding that in Minnesota, grain elevators and warehouses are connecting links in the chain of transportation, between farm wagons and railway cars, for the transportation of grain, and as such are a practical necessity in the transfer of grain from producer to consumer; that their use in facilitating the handling, storage, and transportation of the products of the State is a public use, and subject to legislative control; that the use of a portion of a railroad right-of-way for a grain elevator site is a use directly in aid of the public purposes for which the land was acquired by the railway company under its right of eminent domain. Gurney vs. Elevator Co., 63 Minn. 70; Stewart vs. Gt. Northern Ry. Co., 65 Minn. 515. These decisions of the Minnesota Supreme Court were rendered, after both the Acts of 1893, and 1895 became law, but they announced what had been the law of the State before either of said Acts were passed. We do not assume, or concede, that the law, as declared in either of these decisions, can rightly be made a basis of State regulation of warehouses, on the ground declared in said Acts. We only refer to the decisions as a possible source of the novel ground of right of State regulation declared in those Acts. Moreover, by adopting the basis of State regulation declared by those Acts, the Minnesota farmer, who ever gets the ear of the legislature in grain and warehouse legislation, would be greatly benefited. Many private ele-

vators and warehouses, like defendant's, used exclusively to handle the sole grain of the warehouseman purchased outright of the farmers, and not for storing, and handling grain for the public, would be changed into public storehouses. Thus in new districts where barns and granaries for holding grain in store are few, storage houses would be opened for the farmers where they could deposit their grain in store, and hold it until the markets warranted its sale. These, and other like considerations had, we doubt not, much weight with the legislature in inducing it to pass the Act of 1893, and the broader Act of 1895.

We submit that the legislature intended by the Act of 1895 to make *all* elevators and warehouses, falling within the purview of the Act, whether used for the storage of grain for others or not, public elevators, and subject to *all* the provisions of the Act; and that those provisions are so connected that all must fall, if a part only are unconstitutional and void, as applied to the facts of this case.

5.

The mere fact, that an elevator or warehouse, not used for receiving, storing or handling grain for others than the owner, is situated on railroad right-of-way, depot grounds, or land acquired by a railroad company for railroad purposes, at one of its stations, or sidings, does not make the use and operation of such elevator or warehouse, so situate, a proper or legitimate subject for police regulation, or give the State the right to require a license for its operation, to declare it a public elevator or warehouse, to be subject to the supervision, inspection, rules and regulations of the State Railroad and Warehouse Commission, and to the provisions of said Act.

As above argued, the criterion, whether a law is enacted in the legitimate exercise by the State of its police power, is: Does

the law in any reasonable way secure, or help to secure the safety of the people of the State generally? Does it reasonably protect, or help to protect the State, or its citizens, against human wrong doing and physical danger? If it does, then the State in enacting such law has acted within the limits of its police power; if it does not, then the State has not acted within the limits of its police power. To place a private warehouse on a railroad right-of-way does not make it any part of a railroad, or its operation any part of the operation of a railroad; it is a private warehouse still, and the rights and duties of its owner must be those arising from his relations to the State and the public as a *warehouseman*. The mere fact that the warehouse or elevator is located on or off railway land, used in connection with a line of railroad, is one wholly irrelevant in determining the power of the State to regulate by law the use of such an elevator or warehouse so situated. It is not the elevator or warehouse itself, that the State may control and regulate, but only its *use*, and *operation*. The State's power to regulate such use and operation is limited, reasonably to protecting itself, or its citizens against any human wrong doing, or physical danger that may arise from such use and operation. Within the limits of such protective power, and those prescribed by the constitution, the State may regulate the use and operation of an elevator or warehouse, by enacting laws protective of its citizens, the public at large, whose grain is stored and handled therein, and to whose use the elevator or warehouse is thereby devoted. Here the power of the State to regulate by law the use of an elevator or warehouse, belonging to a private corporation or individual, begins and ends. The mere fact that it is located on or off the right-of-way of a railroad company, whose cars may be employed to transport to the market the grain shipped from such elevator and warehouse, can in no wise increase or diminish the State's power to regulate by law the use of the same. The attempt of the Minnesota legislature, by the said Act of 1893, and the Act of 1895, here in question, to make the fact

of the location of an elevator or warehouse, operated by a private corporation or individual, upon railroad land devoted to a public use, the determining factor as to whether such elevator or warehouse is "public," and its use and operation subject to legislative control and regulation, has, so far as we are aware, no legislative parallel.

Mr. Justice Field in his dissenting opinion in the Munn case, (94 U. S. 113, 138), said: "The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used by a constitutional convention, which can change a private business to a public one, or alter the character of the building in which the business is transacted. A tailor's or a shoemaker's shop would still retain its private character, even though the assembled wisdom of the State should declare, by organic act, or legislative ordinance, that such a place was a public workshop, and that the workmen were public tailors or public shoemakers. One might as well attempt to change the nature of colors by giving them a new designation. The defendants were no more public warehousemen, as justly observed by counsel, than the merchant who sells his merchandise to the public is a public merchant, or the blacksmith who shoes horses for the public is a public blacksmith; and it was a strange notion that by calling them so they would be brought under legislative control." So here. The notion of the Minnesota legislature, that an elevator belonging to a private corporation, situated on railroad right-of-way, can be brought under legislative control by calling it a public elevator, whether devoted to a public use or not, is "a strange notion."

6.

The provision of Section 4, of said Act, above referred to, making it compulsory upon a warehouseman to store and handle grain for others, is unconstitutional, and void, and especially as applied to the facts of the case at bar, under said clause as to due process of law.

In regard to Chapter 126, Laws of North Dakota, 1891, referred to supra, this Court said:

"Another argument advanced is based on the admitted allegation that the principal business of the plaintiff in error, in connection with his warehouse, is in storing his own grain, and that the storage of the grain of other persons is and always has been a mere incident, and it is said that the effect of this law will be to compel him to renounce his principal business and become a mere warehouseman for others. We do not understand this law to require the owner of a warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit. Then he becomes subject to the statutory regulations, and he cannot escape them by asserting that he also elevates and stores his own grain in the same warehouse."

Brass vs. Stoeser, 153 U. S. 391, 404.

See also case cited below under provision as to compulsory delivery at terminal points.

Again, the provision of section 4, of said Act, above referred to, requiring the warehousman, upon request of the depositor of grain for storage or shipment, to deliver to him a warehouse receipt therefor in favor of such person, which "shall also state upon its face that the grain mentioned in such receipt, or receipts has been received into store * * * and that upon the return of said receipt, or receipts, and upon the payment or tender of payment of all lawful charges for receiving, etc., said grain, * * * such grain is deliverable, * * * if the owner so desires in quantities not less than a carload on track, on the same line of railway, at any terminal point in this State, which the owner may designate, where State inspection and weighing is in force," etc., is unconstitutional and void, and especially as applied to the facts of this case, under said clause as to due process of law.

In support of the above proposition, and without further argument, we cite the following authorities:

"If the legislature should undertake to provide that persons following some specified lawful trade or occupation, or employment

should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the Act would transcend the due bounds of legislative power. * * * "

Cooley's Con. Lim. 5th Ed. p. 486.

"The liberty mentioned in that amendment (14th Amendment) means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential, to his carrying out to a successful conclusion the purposes above mentioned."

Allgeyer vs. Louisiana, 165 U. S. 578, 589.

"The main proposition advanced by the defendant is, that his enjoyment upon terms of equality, with all others, in similar circumstances, of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding and selling property, is an essential part of his rights of liberty and property as guaranteed by the 14th Amendment. The Court assents to this general proposition as embodying a sound principle of constitutional law."

Powell vs. Pennsylvania, 127 U. S. 678, 684.

See also opinions of Mr. Justice Field, and Mr. Justice Bradley, in *Butchers' Union S. H. & L. S. L. Co. vs. Crescent City L. S. L. & S. H. Co., 111 U. S. 746.*

"Liberty as we have seen, includes the right to contract as others may; and to take that right away from a class of persons following lawful pursuits is simply depriving such persons of a time-honored right which the Constitution undertakes to secure to every person."

State of Mo. vs. Loomis, 115 Mo. 307, 316.

In the above case a law prohibiting those engaged in manufacturing and mining from issuing in payment of wages to labor-

ers any order, check, etc., payable otherwise than in money, was held void.

See also State vs. Goodwill, 33 W. Va. 179.
State vs. Coal Co., 33 W. Va. 188.

In *Goodcharles vs. Wigeman, 113 Pa. St. 431*, a similar law was held void, and the court said: "They are utterly unconstitutional and void inasmuch as by them an attempt has been made by the legislature to do what in this country cannot be done; that is, prevent persons who are *sui juris* from making their own contracts."

In *Commonwealth vs. Perry, 28 N. E. Rep. 1126*, a statute which provided that no employer should impose a fine upon an employee engaged in weaving for imperfections in weaving was held void as an interference with the right to make reasonable and proper contracts in conducting a legitimate business.

In *Millett vs. People, 117 Ill. 294*, a law providing that all coal mined in the State should be weighed on scales provided by the mine owner was held void.

In *Frorer vs. People, 31 N. E. Rep. 395*, a law which prohibited mine owners and manufacturers from keeping "truck stores" was held void.

In *State vs. Scougal, 51 N. W. Rep. 858*, a law which prohibited any one from engaging in the banking business without first forming an association as provided was held void.

In *Ramsey vs. People, 17 L. R. A. (Illinois) 853*, a law requiring wages of coal miners, if based on the quantity of coal mined to be computed on the whole quantity mined before the coal was screened, was held void.

In *People vs. Gillson, 109 N. Y. 389*, a law which prohibited any person who sells food from giving away therewith anything as a gift, was held void.

In *West Virginia vs. Coal Co., 6 L. R. A. (W. Va.) 359*, a law prohibiting persons engaged in mining and manufacturing from selling merchandise to their employees at a greater profit than to others was held void.

Without further statement of the nature of the cases we cite the following in each of which statutes interfering with the liberty of contract were held void:

In re Jacobs, 98 N. Y. 98.
Ritchie vs. People, 155 Ill. 98.
Dennis vs. Moses, 18 Wash. 537.
Harding vs. People, 160 Ill. 459.
Braceville Co. vs. People, 147 Ill. 66.
State vs. Julow, 129 Mo. 163.
A. T. & S. F. Ry. Co. vs. Campbell, 48 L. R. A. 251.

In speaking of the police power this court has said: "The legislature may not under the guise of protecting the public interests arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

Lawton vs. Steele, 152 U. S. 133, 136.

We claim also that the provisions of Section seven, of said Act, requiring the warehouseman to submit his warehouse, property, books, records, accounts, papers and proceedings to the Commission for inspection are invalid as applied to the case at bar, on the same constitutional grounds, among others, above stated. We make the same claim in regard to the provisions of Section four, as to the compulsory order and time of delivery of grain, and issue of certificates therefor. Other provisions might be referred to, but we pass these questions by mere reference to them, and without further argument thereon.

"Due process of law" may be thus defined: Whatever in the regular administration of law in a State is general, and impartial in its operation on *all* persons, is due process of law.

Caldwell vs. Texas, 137 U. S. 692.
Walker vs. Sauvinet, 92 U. S. 90.
Hurtado vs. Cal., 110 U. S. 516.

POINT II.

Said Act (Ch. 148 G. L. Minn. 1895) is repugnant to Section one, of Article fourteen of the amendments to the Constitution of the United States, providing that no State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws, and is unconstitutional, illegal and void, and especially in so far as said Act attempts to declare elevators and warehouses, in which only the grain of the declare elevators and warehouses, n which only the grain of the owner is received, stored, shipped, or handled public elevators or warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to purchase a license therefor. (Specification of Errors Nos. 4 and 6 Supra; Trans. p. 8.) The discussion of this point involves the discussion of the following question:

The fact that said Act applies only to elevators and warehouses situated on railroad right-of-way, depot grounds, or land acquired by a railroad company for railway purposes, at one of its stations or sidings, renders the Act invalid, and especially so as applied to the facts of the case at bar, as denying to owners of such elevators, and warehouses, and especially to this plaintiff in error, the equal protection of the laws.

1. The clauses of the 14th Amendment in question under the present and preceding points apply as well to corporations as to individual persons.

Pembina Mining Co. vs. Pennsylvania, 125 U. S. 181.
Gulf, etc., Ry. Co., vs. Ellis, 165 U. S. 150.

2. These clauses apply to persons, and not citizens, i. e., persons, whether they be citizens or not citizens. Every person, whether a citizen or not, and no matter where residing, is protected by these clauses against any action by the State, which will deprive him of life, liberty or property, without due process of law, or deny to him the equal protection of the laws.

Yick Wo vs. Hopkins, 118 U. S. 356.

3. Said clause, as to the equal protection of the laws, is a limitation upon State power prohibiting, and rendering invalid State legislation, that does not treat *all persons* subject to legislation *alike, under like circumstances and conditions*, both in the privileges conferred, and the liabilities imposed.

"The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that *all persons* subjected to such legislation shall be *treated alike under like circumstances and conditions*, both in the privileges conferred and the liabilities imposed."

Hayes vs. Missouri, 120 U. S. 68, 71.

"It (said clause as to equal laws) has respect to *persons* and *classes* of persons. It means that no person or class of persons shall be denied the *same protection* of the laws which is enjoyed by *other persons* or *other classes* in the *same place and under like circumstances*."

Missouri vs. Lewis, 101 U. S. 22, 31.

"The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process

of law, or deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no *arbitrary* deprivation of life or liberty, or *arbitrary* spoliation of property, but that *equal* protection and security should be given to *all* under *like circumstances* in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; * * * that no impediment should be interposed to the pursuits of any one *except as applied to the same pursuits by others under like circumstances;* that no greater burdens should be laid upon one than are laid upon others in the *same calling* and *condition.*"

Barbier vs. Connolly, 113 U. S. 27, 31.

"The inhibition of the amendment, that no State shall deprive any person within its jurisdiction of the equal protection of the laws, was designed to *prevent* any person or class of persons from being *singled out* as a *special subject* for *discriminating* and hostile legislation."

Pembina Mining Co. Case, Supra, 188.

"Class legislation discriminating against some and favoring others is prohibited."

Barbier Case, Supra, p. 32.

Again, the inhibition of said clause, as construed in the leading cases above cited, being directed to State legislation, that does not treat all persons subject to legislation "alike, under like circumstances and conditions," as to privileges conferred and liabilities imposed, State legislation that does so treat all such persons is not so inhibited. From the requirement of like treatment to all under like circumstances and conditions, State legislation may accordingly, within said clause, group and classify persons subject to legislation with reference to this requirement. But the classification must fairly meet the requirement. The "like circumstances and conditions" with reference to which classification is made, though common to all persons within the class, must not be irrelevant, immaterial and arbitrarily selected without reference to the pur-

poses of the legislation. The legislation, if such is the case, will fall within the inhibition of said clause. If such is not the case, it may not. Accordingly State legislation imposing upon a certain class of persons in the State special duties, and burdens not resting on the general public, is within the inhibition of said clause, if the classification is unreasonable and arbitrary, or based upon matters which have no reasonable relation to the object sought to be accomplished. This is true even if the law deals alike with all persons of the designated class. Whether or not the classification is warranted or permissible under said clause is a judicial question.

"The equal protection of the laws which is guaranteed by the Fourteenth Amendment does not forbid classification. That has been asserted in the strongest language. Barbier vs. Connolly, 113 U. S. 27. * * * This declaration has, in various language, been often repeated, and the power of classification upheld, whenever such classification proceeds upon any difference which has a *reasonable relation* to the object sought to be accomplished. * * * On the other hand, it is also true that the equal protection guaranteed by the constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney's fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. *Even where the selection is not obviously unreasonable, and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed.* Yick Wo vs. Hopkins, *supra*. forcibly illustrates this. In that case a municipal ordinance of San Francisco, designed to prevent the Chinese from carrying on the laundry business, was adjudged void. This Court looked beyond the mere letter of the ordinance to the condition of things as they existed in San Francisco, and saw that, under the guise of regulation, any arbitrary classification was intended and accomplished. * * * It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. * * * Indeed, the very idea of classification is that of inequality, so that it goes without saying

that the fact of inequality in no manner determines the matter of constitutionality."

Atchison etc. Ry. Co. vs. Matthews, 19 Sup. Ct. Rep. 609, 612, 613.

"Yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorneys' fees of parties successfully suing them, and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears *a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without any such basis.* * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights, which is the foundation of free government. * * * It is apparent that the *mere fact* of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some *reasonable ground*,—some *difference which bears a just and proper relation to the attempted classification*, and is not a mere arbitrary selection."

Gulf etc. Ry. Co. vs. Ellis, 165 U. S. 150, 155, 159, 160, 165.

"Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a clasification for some purposes furnish no reason whatever for a classification for legislative purposes. *The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations.*"

State vs. Loomis, 115 Mo. 307, 314.

Smyth vs. Ames, 169 U. S. 466, 526.

Lawton vs. Steele, 152 U. S. 133, 137.

Again, while said clause, as to equal laws, was not intended to interfere with the power reserved to the States to enact police legislation to secure the general safety, yet state police legislation is not excepted from the requirements of said clause. It "requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed," whether the State legislation be in the nature of a police regulation or not. Accordingly the same rules of classification above stated apply to such legislation. The classification must not be unreasonable or arbitrary, or based upon matters having no reasonable relation to the objects sought to be accomplished.

"But neither the amendment (Fourteenth Amendment)—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity. * * * Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint *if they operate alike upon all persons and property under the same circumstances and conditions.* Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, *if within the sphere of its operation it affects alike all persons similarly situated,* is not within the amendment."

Barbier vs. Connolly, 113 U. S. 27, 31, 32.

Missouri Pacific Ry. Co. vs. Mackey, 127 U. S. 205, 209.

4. The Act in question (Ch. 148 G. L. Minn. 1895), Sec. 1, places "all elevators and warehouses, in which grain is received, stored, shipped *or* handled, and which are situated on the right-of-way of any railroad, depot grounds, or any lands acquired or reserved by any railroad company in this State to be used in connection with its line of railway, at any station or siding in this State, other than terminal points," and the owners of such elevators

and warehouses, in a separate and distinct class, and by the other provisions of said Act imposes special duties and burdens on this class, and its members not imposed on persons not included. This classification works inequality, but, in the language of this Court, above quoted, "the very idea of classification is inequality," and "the fact of inequality in no manner determines the matter of constitutionality." In this matter, under the constitutional requirement of equal laws, as interpreted by this Court in the cases cited above, we claim in regard to this Act as follows:

(1) In so far as the Act applies to all elevators and warehouses, whether used for storing and handling the grain of others, or not, it is invalid, because it does not treat all persons subject to legislation, owning and using elevators, and warehouses in the State, at other than terminal points, *alike, under like circumstances, and conditions*, in the liabilities imposed. It does not fairly meet the requirement of like treatment to all, under like circumstances and conditions. The "like circumstances and conditions," with reference to which classification is made, and common to all within the class, (those regarding use aside), concern the places of location of the elevators and warehouses of the class, the situation, ownership, and use of the lands they occupy, or the use for which such lands were acquired and reserved. These facts and circumstances are irrelevant and immaterial, and are arbitrarily selected by the legislature without reference to the purposes of the Act. The classification is "based upon matters which have no relation to the object sought to be accomplished," by the Act, and is "unreasonable and arbitrary."

The object sought to be accomplished by the Act should, under the law, be to secure from human wrong doing the general safety, the safety of the public generally, of the whole people of the State, who use, or require for use non-terminal country elevators, and warehouses for storing and handling their grain. To justify the State, under its police power, to interpose its authority on behalf of

the public, it must appear that the interests of the *public generally*, as distinguished from those of a particular class, require such interference.

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. * * * To justify the State in thus interposing its authority in behalf of the public it must appear, first, that the interests of the *public generally, as distinguished from those of a particular class*, require such interference; and, second, that the *means* are *reasonably necessary* for the *accomplishment* of the *purpose*, and not *unduly oppressive upon individuals*. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual, and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the Courts."

Lawton vs. Steele, 152 U. S. 133, 136, 137.

In enacting the Act the State exercised its protective power to secure not the general safety, but the safety of that particular class, using or requiring for use only non-terminal elevators or warehouses, situated in certain named places, for handling their grain. Certainly the interests of the public generally, as much as those of this particular portion of the public required State protection, if that were required at all. If the object of the Act was to secure the general safety, it fails in its object, and bears no reasonable relation to the object sought to be accomplished. If the object of the Act was to secure the safety of a particular class only, as distinguished from that of the public generally, no reason appears for the State's interference, and it is without authority. The classification is based upon matters having no relation to the object sought to be accomplished by the Act.

That the classification is arbitrary, unreasonable and unjust is also apparent. It places special duties, and burdens, not on all warehousemen in the State, who operate non-terminal, country elevators and warehouses for storing or handling grain for others,

as well as themselves, or for themselves alone, but on a particular class of such warehousemen only. The warehousemen included in this class, and those excluded, may own exactly similar elevators, and warehouses constructed in exactly the same way; may operate them, store or handle the same kind of grain in them, in the same way, for persons, members of the same neighborhood or community; may charge the same rates for storing or handling; may treat their patrons in the same fair, and honest way. The elevators or warehouses of those included in this class may be just within the line of a certain railroad right-of-way, and those of the warehousemen not included may be just outside that line, but so near to it they can be used in connection with the same railroad, its tracks and cars, with the same facility as those within the right-of-way line; or the warehousemen not included in the class may connect their elevators or warehouses with the railroad by private track, or in other ways, thus giving the public the same warehouse facilities, no greater or less, as the warehousemen within the class. Yet, by the provisions of this Act, the warehousemen included in this class cannot do business without procuring a license and paying one dollar each year for it, and without agreeing to accept and be bound by all the provisions of the Act; can only charge the public such rates for the use of their elevators and warehouses as the Commission may fix; are bound by, and must obey, under penalty, its rules and regulations; must receive, without discrimination, for storage or shipment, all grain offered; must deliver it to the depositor at terminal points if desired; must issue warehouse receipts containing, among other things, an agreement to make delivery at such points; must deliver grain within a limited time, under penalty; must make written reports, under oath, to the Commission, of all grain stored or handled; must submit their elevators or warehouses, property, books, records, accounts, papers and proceedings, to the Commission for inspection. These are some of the special burdens placed upon them, although they stand in the same place, and under like circumstances

and conditions as the warehousemen not included in the class.

If the classification had included only elevators or warehouses painted red or white, or operated by horse power, or electric power, or situated *off* from railroad right-of-way, or other railroad lands, would the law be one tending to secue the safety of the public *generally*, or only of a *particular class* who might use such elevators or warehouses? Would the State be justified in enacting such a law on the plea of interposing its authority on behalf of the general public? Would not the classification be based on circumstances and conditions having no relation to the object sought to be accomplished, i. e., the safety of the whole people of the State, who use non-terminal country elevators or warehouses? Could such a law be said to be "the means reasonably necessary for the accomplishment of such a purpose and not unduly oppressive upon individuals?" Would not such classification be unreasonable and arbitrary? And yet, how would it substantially differ from the one in the Act in question?

The classification in the Act in question is not only made without reference to the purposes of the Act, but it is discrimination, arbitrary and unreasonable, and is "unduly oppressive upon individuals."

(2) In so far as the Act applies to elevators or warehouses used for storing and handling only the warehouseman's own grain, it is invalid for the reasons above stated, that it arbitrarily discriminates against warehousemen included in the designated class, as compared with those not included, and for the additional reason, that it arbitrarily discriminates against members of the class itself, and does not treat all persons alike included in the class. Warehousemen, using their elevators or warehouses for storing or handling only their own grain, are subjected to greater burdens than those whose elevators and warehouses are already devoted to storing, or handling grain for others. The elevators and warehouses of the former are, by the provisions of the Act, forced open to public

use; their private business interfered with, and, it may be, destroyed. These are burdens not placed by the Act upon warehousemen included within the class whose elevators and warehouses are already devoted to the public use. The Act classifies, and then does not operate equally upon all members of the designated class.

(3) Even if the Act is susceptible of the interpretation given it by the Minnesota Supreme Court, that it is a police regulation to secure to the public correct weights, grades, and dockage of grain, applicable to elevators and warehouses not used for storing or handling grain for others than the owner, it is invalid, because it does not meet the constitutional requirement of like treatment to all under like circumstances and conditions. The same reasons for its invalidity above stated apply.

5. As bearing upon the question under discussion we cite the following cases:

A Maryland statute (Ch. 493 Acts of 1898) provided that it should be unlawful for any officer or director of a railroad or mining corporation, doing business in a certain county, to have any interest in any general merchandise store in that county, or to sell goods, wares or merchandise therein. Held, that such statute is void because in conflict with the Fourteenth Amendment to the Federal Constitution in that it makes an arbitrary and unreasonable classification of the persons who may sell goods, wares and merchandise. The Court, by McSherry, C. J., said: "A statute which denies to one person the protection that is accorded to others under the same conditions and in like situation, or which imposes on one a burden not similarly borne by others, is because it so discriminates, in both instances, invalid under the paramount organic law. * * * Whilst the legislature may, under conditions, create classes, and subject all persons coming within the classification to burdens or duties not imposed upon individuals outside of the classes, these classifications must not be arbitrary or unreasonable, but must rely upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed."

Luman vs. Hitchens Bros. Co., 90 Md. 14-25. (1899).

A Missouri statute whereby bookmaking and poolselling was legalized "on the premises or within the enclosure or limits of a regular race course," and the same acts were declared a misdemeanor if done without such limits or off such premises, was held invalid as not affording all persons the equal protection of the laws and being in conflict with the constitution of the state.

The Court said: "Now it is a rule of long established construction in this state, a rule so well settled that it admits of no contravention,' that a statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons, or things of a class is special.' (Authorities.) In the case last cited it was ruled that while the legislature might legislate in regard to a class of persons, yet that they would not be permitted to take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and thereupon enact different rules for the government of each. This is precisely what has been done in the case at bar; the act bestows protection upon all who ply their calling and reap their financial harvests inside the precincts of a regular race course, and inflicts punishment on all who do likewise outside of those artificial boundaries."

State vs. Walsh, 136 Mo. 400-405. (1896).
State vs. Bliler, 138 Mo. 139.

An ordinance of a county forbade the establishing or enlarging of any cemetery within the limits of the county without first obtaining the consent of the supervisors, but impliedly permitted burials without restriction in cemeteries already established. Held, that such ordinance was unequal in its operation in assuming to limit the unrestricted privilege of burial to one class of citizens and to deny it to another class within the same district, or to make the latter subject to the arbitrary will of the supervisors to grant or refuse the privilege, and was, therefore, unconstitutional and void.

Los Angeles vs. Hollywood Cemetery Assn. 124 Cal. 344. (1899).

A city by ordinance declared it unlawful to stable within the city more than two horses except by persons who had first ob-

tained the permission of the council so to do. Held, that such ordinance is unconstitutional and void because it is in conflict with the Fourteenth Amendment to the Constitution of the United States.

Louisiana vs. Krentz, 47 La. Ann. 106. (*1895*).
Louisiana vs. Mahner, 43 La. Ann. 496. (*1891*).

The Congress of the United States, by Joint Resolution, authorized the Commissioners of the District of Columbia to determine the location, near railway stations, where cabs and carriages might stand, such cab and carriage service to be provided by the railway companies. In pursuance of this resolution, the Commissioners made an order designating certain streets, in front of and adjacent to a railway station, as a place where cabs and carriages might stand, but made such a stand for the exclusive use of the cabs of the railway company. The appellant appealed from a judgment rendered against him and fine imposed for violating said order, in allowing his cab to stand upon the designated streets. Held, that said order was unconstitutional and void as being in conflict with the Fourteenth Amendment in that it denied to the citizens of the District of Columbia the equal protection of the laws.

Curry vs. The District of Columbia, 14 Dist. of Col. App. Cases, 423-438 et seq. (*1899*).

A statute of Ohio provided that before any person might engage in the business of plumbing, he should undergo an examination as to fitness, and obtain a license; but further provided that all members of a firm might pursue such business, when only one member had procured such license, and that all officers of a corporation might pursue the business when the manager thereof only had procured such license. Held, that said statute did not operate equally upon all members of a class pursuing the same calling under like circumstances, and was, therefore, unconstitutional and void.

The Court said: "A statute, therefore, which imposes special restrictions or burdens upon, or grants special privileges to persons engaged in the same business under the same circumstances, cannot be sustained, because it is in contravention of the equal right which all are entitled to in the enforcement of the laws and in the enjoyment of liberty, and in the enjoyment of an equal right in the acquisition and possession of property, and so is not of uniform operation."

State vs. Gardner, 58 Oh. St. 599-610. (*1898*).

A statute of the State of Vermont defined peddlers, and required a license fee to be paid by peddlers who sold goods manufactured in the State, and exacted no license fee of peddlers who sold goods manufactured without the State. Held, that this statute is void as being in contravention of that clause of the Fourteenth Amendment to the Constitution of the United States forbidding the States to deny to any person within their jurisdiction the equal protection of the laws.

The Court said: "The rule on this subject is, that the mere fact of classification is not enough to exempt a statute from the operation of the equality clause of said Amendment, but that in all cases it must appear not only that a classification has been made, but that it is one based upon some reasonable ground, some difference that bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."

State vs. Hoyt, 71 Vt. 59-64. (*1898.*)

A "Sample Sellers Ordinance," of the City and County of San Francisco, provided, among other things, in substance, that a merchant, whose business it was to sell goods, which at the time of the transaction were not actually within the corporate limits, or in transitu, under a bill of lading, should pay about twenty times more for his license, and his privilege of pursuing his avocation, than another merchant doing business in the same city, and who dealt in the same kinds of merchandise, but who bought and sold only goods which were actually within the corporate limits, or in transitu, under a bill of lading. The Court says: "The discrimination is made to

depend, solely on the fact, that in the one case, the goods are either in the corporate limits or in transitu, under a bill of lading; and in the other case, they are not."

And the Court says in its opinion: "It (the ordinance) is, flagrantly unjust, oppressive, unequal and partial. It discriminates between merchants in the same place, dealing in the same kinds of merchandise, for no better reason than that one deals in goods either actually in the corporate limits, or in transitu, under a bill of lading; while the other deals in goods outside the corporate limits, and not in transitu, under a bill of lading. If this kind of discrimination be legitimate, and valid, there is no reason why a merchant having his goods in a warehouse on a particular street, might not be required to pay a license fee of ten thousand dollars, while another merchant doing the same kind of business in the same city, and with his goods stored in another street, would be required to pay only ten dollars."

Ex parte Frank, 52 Cal. 606, 610, 611.

The City Council of Nashville passed an ordinance, one section of which discriminated between merchants residing within, and without the city. And the Supreme Court of Tennessee says: "This section discriminates between merchants, manufacturers, and other dealers residing without the limits of Nashville, and members of the same classes residing in the City; and assumes to lay down a special rate of taxation for the former class. This certainly cannot be done, and would be equally beyond the authority of either State or the municipal legislature."

Mayor and City Council of Nashville vs. Althorp, 5 Cold. 554, 560.

The Act of the State of Tennessee, of March 30th, (1883), establishing a railroad commission, imposed certain penalties upon railroad corporations, which were not imposed for like conduct upon other persons operating railroads in the State, although the Act professed to regulate both. Held, that said Act was unconstitutional and void, in that it denied to all persons within the State the equal protection of the law.

Louisville & N. R. Co. vs. Railroad Com., 19 Fed. 679.

We cite also:

Magoun vs. Ill., 170 U. S. 283–294, et seq.
Soon Hing vs. Crowley 113 U. S. 703–709.
Missouri etc. R. Co. vs. Humes, 115 U. S. 512–523.

POINT III.

Said Act (Ch. 148 G. L. Minn. 1895) is repugnant to that clause of section eight, article one, of the Constitution of the United States, granting to congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," and is unconstitutional, illegal and void, especially in so far as said Act attempts to declare elevators and warehouses in which is received, stored, shipped or handled only the grain of the owner, solely purchased and placed in the same for the purpose of shipment, and actually shipped from said elevators and warehouses, beyond the boundaries of Minnesota, and into other States, public elevators and warehouses, and to make the same subject to the provisions of said Act, and to the supervision, inspection, rules, and regulations of the State Railroad and Warehouse Commission, and to require such owner to pay a license therefor.

The record in this case shows, that on April 16th. 1895, when said Act became a law, and for more than one year prior to that time, plaintiff in error owned, occupied and operated, and has since that time, the warehouse in question; that it is a small building without machinery or mechanical appliances for elevating or handling grain; that all grain is unloaded by hand from wagons, placed in the bins of the warehouse, and thence, either directly and without delay spouted by force of gravity into box cars for direct, and continuous interstate shipment, or delayed in said warehouse only a sufficient time for the accumulation of a full car-load for such shipment; that all grain received into, and handled in said warehouse is

the property of plaintiff in error, which it contracted for, purchased, loads into cars through and by means of said warehouse, for the express purpose of interstate shipment, and actually ships directly, and continuously over the railway line named to its terminal elevators in La Crosse or Green Bay, Wisconsin, or to other places beyond the boundaries of Minnesota; that no grain is, or has been received into, stored, or handled for others in said warehouse, by plaintiff in error, nor has it offered or attempted so to do, or issued or offered to issue any warehouse receipt for any property therein; that the use of said warehouse is, and has been, confined by plaintiff in error solely to handling his own grain purchased for interstate shipment.

Said warehouse is an instrument of interstate commerce. It is not a grain storage warehouse for others, or for the plaintiff in error. It is a medium, an instrument for loading grain into cars for shipment to terminal storage houses in La Crosse or Green Bay, Wisconsin, or to markets beyond the boundaries of Minnesota. All grain received into said warehouse passes immediately and directly through it, as through a spout, into cars, or is held only a sufficient time to secure full car-loads, with no purpose other than that of continuing the shipment within a reasonable time. All such grain has actually commenced its final movement from the State of its origin to the State of its destination. Its interstate transit has begun by a substantially continuous route or journey. Its actual commitment to a common carrier for transportation out of the State to the State of its destination is not essential; it is sufficient if the grain has, through any medium or instrument of transportation, started on its ultimate passage to another State. All grain in said warehouse, on its receipt therein, becomes a part of interstate commerce, ceases to be governed exclusively by State law, and begins to be governed and protected by the national law of commercial regulation.

Coe vs. Errol, 116 U. S. 517.

Again, all grain in said warehouse is purchased, not for the purpose of being stored or held therein, or sold to others, or consumed in Minnesota, but for the express and only purpose of shipment, for storage, to the terminal warehouses of plaintiff in error in Wisconsin, or to markets beyond Minnesota boundaries. For the purpose of putting all such grain in the way of such interstate transit it is placed in said warehouse. It then becomes an *article bought for the purpose of, and put in the way of such transit, and a part of interstate commerce*, and subject to Federal regulation. Interstate commerce does not consist of transportation merely; it includes, among other things, the *purchase* and *sale* of articles intended to be transported from one State to another, and the *articles themselves*. bought for the purpose of such transit, or put in the way of it.

"The regulation of commerce applies to the subjects of commerce, and not to matters of internal police. Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation ,and its instrumentalities, and *articles bought, sold, or exchanged for the purpose of such transit among the States, or put in the way of transit*, may be regulated, but this is because they form part of interstate trade or commerce."

United States vs. Knight, 156 U. S. 1, 13, 36.
Mobile County vs. Kimball, 102 U. S. 691.

Again, the orbit of activity of plaintiff in error, in operating said warehouse, touches the general public, the people of the State at one point only, i. e., the purchase of the grain in said warehouse. Even assuming that the State of Minnesota, in the legitimate exercise of its police power, reserved to it under the Federal Constitution, may by legislation provide such rules and regulations as are reasonably necessary to secure to the public correct weights, grades, and dockage, on the purchase of the grain in said warehouse, it can go no further. The State cannot, under the guise of exercising its police power to secure the general safety, exceed in the exercise of that power the limit actually necessary to secure such safety. It

cannot, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose burdens, or unsual and unnecessary restrictions upon the instruments, or subjects, or the carrying on of interstate commerce.

"All that the Federal authority can do is to see that the States do not, under cover of this power (police power), invade the sphere of national sovereignty, obstruct or impede the exercise of any authority which the Constitution has confided to the nation, or deprive any citizen of rights guaranteed by the Federal Constitution."

*Cooley Const. Lim. * page, 574.*

"It (the State) may not, under the cover of exerting its police powers, substantially prohibit or burden either foreign or interstate commerce."

Railroad Co. vs. Husen, 95 U. S. 465, 472.
Schallenberger vs. Pennsylvania. 171 U. S. 1, 13.

The Act in question was not intended as, and is not a mere police regulation to secure to the public correct weights, grades, and dockage. It was intended as, and is a system of rules, and regulations for the storage and handling of grain, applicable alike to all elevators and warehouses within its purview.

As applied to the warehouse and business of plaintiff in error, the provisions of said Act affect and bear directly upon the business conducted in said warehouse, its use and operation, and the purchase, the handling, and the shipment of the grain therein. The Act affects, regulates, interferes with, and places a burden upon interstate commerce in the broadest sense of that term.

The Act (Ch. 148 G. L. Minn. 1895) is, as applied to the facts of the case at bar, repugnant to the Federal Constitution in the respects above named. The judgment of the Minnesota Supreme Court in declaring the Act valid as applied to the facts of the case was error. That judgment should be reversed.

Respectfully submitted,

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